

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition causally related to his federal employment; and, (2) whether the Office properly refused to reopen his claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On February 14, 2006 appellant, then a 42-year-old equipment specialist, filed a Form CA-2 occupational disease claim, alleging that he experienced stress due to discrimination over nonselection for a promotion to lead equipment specialist. He had been off work from January 11 to February 13, 2006. By letters dated February 22, 2006, the Office informed appellant of the evidence needed to support his claim and asked that the employing establishment respond.

Appellant submitted disability slips dated January 11, February 1 and 9, 2006 from Dr. William C. Flores, a family practitioner, who advised that appellant was under treatment for stress “because of his employment” and could not work from January 11 to February 13, 2006.<sup>1</sup> In a February 15, 2006 statement, appellant’s supervisor, Michael Gaza, advised that there had been no discrimination in the selection process for the promotion. The employing establishment controverted the claim. In a statement dated February 28, 2006, appellant described his qualifications, noting that he had been an equipment specialist for 16 years and reiterated that he had been discriminated in the promotion selection process. He noted that the person selected had not been an equipment specialist.

By decision dated June 26, 2006, the Office denied appellant’s claim, finding that he failed to establish a compensable factor of employment.

On October 23, 2006 appellant requested reconsideration, stating that the evidence submitted showed that he had stress. In a November 14, 2006 decision, the Office denied appellant’s reconsideration request.

## **LEGAL PRECEDENT -- ISSUE 1**

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.<sup>2</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.<sup>3</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>4</sup>

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<sup>1</sup> The record also contains two form reports from the employing establishment dispensary. It is unclear if the report dated January 11, 2006, which did not contain a diagnosis, was signed by a physician and the second report was illegible.

<sup>2</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>3</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>4</sup> *Id.*

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>5</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>6</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>7</sup> When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>8</sup> A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>9</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.<sup>10</sup> Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an employment-related emotional condition. Appellant did not contend that performing his actual job duties as an equipment specialist was stressful. Rather, he alleged that he experienced stress because he was not promoted to a lead equipment specialist position. Administrative and personnel matters are not considered factors of employment absent error or abuse by the employing establishment.<sup>12</sup> The Board has long held that determinations by the employing establishment concerning promotions are administrative in nature and not a duty of the employee.<sup>13</sup> Appellant must demonstrate that the promotion selection process constituted

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<sup>5</sup> 28 ECAB 125 (1976).

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>8</sup> *Lillian Cutler*, *supra* note 5.

<sup>9</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>10</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>11</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>12</sup> *Id.*

<sup>13</sup> *Andrew J. Sheppard*, 53 ECAB 170 (2001).

error or abuse and he submitted no evidence to substantiate error on the part of his managers. While he noted that he had been an equipment specialist for 16 years, experience that the person selected as lead equipment specialist allegedly did not have this does not demonstrate error or abuse. His supervisor Mr. Gaza advised that there had been no discrimination in the selection process. Appellant did not submit probative evidence to establish error and abuse on the part of the employing establishment. He failed to establish that the denial of promotion constituted a compensable factor of employment and the Office properly denied his claim.<sup>14</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>15</sup> Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>16</sup> Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>17</sup> Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>18</sup> Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>19</sup>

### **ANALYSIS -- ISSUE 2**

In his request for reconsideration, appellant merely stated that the evidence submitted was sufficient to establish stress and on an Office form checked that he was requesting reconsideration. He, therefore, did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>20</sup>

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<sup>14</sup> See *Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>15</sup> 5 U.S.C. § 8128(a).

<sup>16</sup> 20 C.F.R. § 10.606(b)(2).

<sup>17</sup> *Id.* at § 10.608(b).

<sup>18</sup> *Helen E. Paglinawan*, 51 ECAB 591 (2000).

<sup>19</sup> *Kevin M. Fatzer*, 51 ECAB 407 (2000).

<sup>20</sup> See *supra* note 16.

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted no additional evidence. He, therefore, did not submit relevant and pertinent new evidence not previously considered by the Office and the Office properly denied his reconsideration request.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty. The Board further finds that the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 14 and June 26, 2006 be affirmed.

Issued: May 8, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board